

Memorandum



Date: January 20, 2005

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Agenda Item No. 7(O)(1)(C)

Subject: Intergovernmental Agreement with the State of Florida Department of Law Enforcement (FDLE)

RECOMMENDATION

It is recommended that the Board approve the Intergovernmental agreement between Miami-Dade County and the State of Florida Department of Law Enforcement (FDLE) for the FDLE to provide fingerprint based criminal background checks for County employees. FDLE will provide background checks through their Volunteer and Employee Criminal History System (VECHS) under the National Child Protection Act (NCPA) of 1993, as amended, and Section 943.0542, Florida Statutes. Approval of this agreement will permit Miami-Dade County to expand its existing procedures and to perform more comprehensive employee criminal background checks. Through the VECHS program, FDLE and the Federal Bureau of Investigation (FBI) provide to qualified organizations (not individuals) state and national fingerprint based criminal history information on applicants, employees, and volunteers. Currently, fingerprints for full time employees for whom more extensive background checks are not required by the various County agencies, are electronically transmitted to the Miami-Dade Police Department (MDPD) for search against the local Miami-Dade County Fingerprint Database. This search does not include searches of fingerprint databases outside of Miami-Dade County. However, a name search is performed for any open fugitive information (warrants) against the FDLE database which shows outstanding warrants and other status files (public record).

BACKGROUND

Miami-Dade County desires to conduct more extensive background checks than are currently performed through existing procedures. Prior to the enactment of the National Child Protection Act of 1993, as amended, and subsequent provisions included in Section 943.0542, Florida Statutes, the County was not able to access fingerprint based criminal history due to the restrictions that limited access and use for law enforcement purposes only. The County has been advised by the State of Florida that criminal history checks that were previously unavailable, can now be accessed as a result of the NCPA (1993) as amended, and Florida Statute 943.0542 (1999) because the County provides services to children and the elderly. This change opens criminal history information to Miami-Dade County that may be accessed through the FDLE and FBI fingerprint based criminal history records databases. As a result, this search can be requested for any position within our organization.

The current fees for conducting criminal history background checks are currently \$23.00 for the state of Florida record search plus a federal search fee of \$24.00 for applicants and employees, and \$36.00 for volunteers (\$18.00 FDLE and \$18.00 FBI). FDLE collects both payments and forwards the appropriate federal fees to the FBI. The Employee Relations Department anticipates executing

Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners
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approximately 3,000 background checks for new potential hires per year which amounts to an estimated \$250,000 per year. The NCPA requires the FDLE and the FBI to make a reasonable effort to return history information within 15 business days. However, the FDLE currently processes Florida record checks within 5 business days.

It should be noted that while FDLE criminal history and warrant information may be accessed as public information through the Internet, this is a name search only. However, name searches can produce erroneous results due to the unreliability of name information. Additionally, while Florida Warrant information is available at no charge through the Internet at <http://www.fdle.state.fl.us>, this background check does not qualify as "criminal justice purpose". Consequently, they cannot be done using the Florida Crime Information Center access at MDPD. Also, national warrants can only be obtained as part of a fingerprint based check.

Approval of the attached agreement will permit Miami-Dade County to expand the County's local pre-employment criminal background checks to include a search of state and national criminal records databases.


Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: January 20, 2005

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 7(O)(1)(C)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(O)(1)(C)
01-20-05

RESOLUTION NO.

RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE STATE OF FLORIDA DEPARTMENT OF LAW ENFORCEMENT (FDLE) FOR THE FDLE TO PROVIDE FINGERPRINT BASED BACKGROUND CHECKS FOR COUNTY EMPLOYEES AND VOLUNTEERS THROUGH THEIR VOLUNTEER AND EMPLOYEE CRIMINAL HISTORY SYSTEM (VECHS) FOR CRIMINAL HISTORY RECORD CHECKS UNDER THE NATIONAL CHILD PROTECTION ACT OF 1993, AS AMENDED, AND SECTION 943.0542 FLORIDA STATUTES; AND AUTHORIZING THE COUNTY MANAGER TO EXECUTE AGREEMENT AND TERMINATION PROVISIONS AS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, the Home Rule Charter authorizes Miami-Dade County to provide for the uniform health and welfare of the residents throughout the County and further provides that all functions not otherwise specifically assigned to others under the Charter shall be performed under the supervision of the County Manager; and

WHEREAS, this Board desires that Miami-Dade County exercise due diligence in the employment of qualified individuals to County service who provide direct and indirect services to residents throughout the County; and

WHEREAS, the State of Florida, Florida Department of Law Enforcement, provides said services of value to the County and has demonstrated an ability to provide these services; and

WHEREAS, the County is desirous of obtaining those services,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY FLORIDA, that this Board approves the execution of the Intergovernmental Agreement between Miami-Dade County and the State of Florida, Florida Department of Law Enforcement to enable the County to obtain fingerprint based background checks for County employees through the Volunteer and Employee Criminal History System (VECHS) for Criminal History Record Checks under the National Child Protection Act of 1993, as amended, and Section 943.0542, Florida Statutes; and authorizes the County Manager to execute same for and on behalf of Miami-Dade County; and to authorize the County Manager to execute termination provisions as contained therein.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman
Dennis C. Moss, Vice-Chairman

Bruno A. Barreiro
Jose "Pepe" Diaz
Sally A. Heyman
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto

Dr. Barbara Carey-Shuler
Carlos A. Gimenez
Barbara J. Jordan
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this
20th day of January, 2005. This Resolution and contract, if not vetoed, shall become
effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by the County Attorney as
to form and legal sufficiency.



By: _____
Deputy Clerk

Eric A. Rodriguez



Florida Department of Law Enforcement
Criminal Justice Information Services /User Services Bureau

VECHS QUALIFIED ENTITY APPLICATION
Volunteer & Employee Criminal History System (VECHS)
for Criminal History Record Checks
under the National Child Protection Act of 1993, as amended,
and Section 943.0542, Florida Statutes

ENTITY NAME: Miami-Dade County

PHYSICAL OPERATING ADDRESS IN FLORIDA: 111 N.W. 1st Street, Suite 2110, Miami, Florida 33128

COUNTY: Miami-Dade

MAIN CORPORATE/ORGANIZATION PHYSICAL ADDRESS: 111 N.W. 1st Street Miami, Florida 33128

MAILING ADDRESS: 111 N.W. 1st Street, Suite 2110 Miami, Florida 33128

ENTITY PHONE: (305) 375-1589 FAX: (305) 375-2459

NAME OF ENTITY HEAD: George M. Burgess TITLE: County Manager

CONTACT PERSON: Donald S. Allen TITLE: Director, Employee Relations Dept.

CONTACT PHONE: (305) 375-1589 E-MAIL ADDRESS: DON@miamidade.gov

LEGAL TYPE OF ENTITY (Select one): Governmental (Public) ☒ Private - Non-Profit ☐ Private - Profit ☐

Please check all appropriate areas below that apply to the service(s) provided by your entity to children, the elderly, and/or the disabled. NOTE: A "child" includes any unmarried person under 18 years of age that has not been emancipated by order of a court. An "elderly person" means any person 60 years of age or older. A "disabled person" includes any person with a mental or physical impairment who requires assistance to perform one or more daily tasks.

Type of Person(s)	Care or Treatment	Education, Training, or Instruction	Supervision	Recreation	Care Placement
Child	X	X	X	X	X
Elderly	X	X	X	X	X
Disabled	X	X	X	X	X

ENTITY MISSION STATEMENT/SUMMARY OF TYPE OF SERVICES YOUR ENTITY PROVIDES - Please describe the services your entity provides that would qualify your entity to receive state and national criminal history record checks under this program and the applicable laws:

Miami-Dade County provides a variety of social services to children, the elderly, and disabled requiring direct contact with these residents by County staff.

Do you plan to request state & national criminal history checks through the VECHS Program on YOUR current or prospective FLORIDA employees, volunteers, contractors/vendors? YES ☒ NO ☐ If no, please explain (continue on separate page, if necessary):

(Contractors or vendors may be checked through the VECHS Program, if they have or may have unsupervised access to the children, elderly, or disabled persons for whom a qualified entity provides care.)

Number of Current Employees:

30,000

Number of Current Volunteers:

500

Number of Expected New Employees during the next 12 months:

2,500

Number of Expected New Volunteers during the next 12 months:

500

Are you currently required by law to obtain state and national (LEVEL 2) criminal history record checks on any of your current/prospective employees, volunteers? YES ☒ NO ☐ If yes, what state agency monitors your entity and these required record checks?
FDLE

PLEASE NOTE: Entities that are required to obtain state and national (LEVEL 2) criminal history checks under other statutory provisions, on all or specific employees/volunteers, must continue to comply with those statutes and the procedures that specifically apply to them. These entities must continue to use the fingerprint cards specifically provided for processing the required record checks. Requests for these required criminal history record checks may not be processed through the VECHS Program, pursuant to federal and Florida law.

Approximately how many fingerprint cards do you anticipate submitting to FDLE, through the VECHS Program, for state and national criminal history record checks, within the next twelve months?

3,000

SIGNATURE OF ENTITY HEAD: _____

DATE: _____

Please mail your completed application to FDLE at the address below. Please contact us at the number below for further information.

FLORIDA DEPARTMENT OF LAW ENFORCEMENT
USER SERVICES BUREAU - ATTN: VECHS TEAM - P.O. BOX 1489
TALLAHASSEE, FL. 32302-1489
(850) 410-VECHS



Florida Department of Law Enforcement
Criminal Justice Information Services
User Services Bureau

VECHS USER AGREEMENT

Volunteer & Employee Criminal History System (VECHS)
for Criminal History Record Checks by a Qualified Entity
under the National Child Protection Act of 1993, as amended,
and Section 943.0542, Florida Statutes

I. Parties to Agreement

This Agreement, entered into by the Florida Department of Law Enforcement (hereinafter referred to as FDLE), an agency of the State of Florida, with headquarters in Tallahassee, Florida, and Miami-Dade County, (hereinafter referred to as User), located at 111 N.W. 1 Street, Suite 2110 Miami, FL 33128, is intended to set forth the terms and conditions under which criminal history background checks authorized by the National Child Protection Act of 1993, as amended, (hereafter referred to as the NCPA), and as implemented by Section 943.0542, Florida Statutes, (F.S.), shall be conducted.

- A. FDLE has established and maintains intrastate systems for the collection, compilation, and dissemination of state criminal history records and information in accordance with subsection 943.05(2), F.S., and, additionally, is authorized and does participate in similar multi-state and federal criminal history records systems pursuant to subsection 943.05(2), F.S.;
- B. FDLE and its user agencies are subject to and must comply with pertinent state and federal regulations relating to the receipt, use, and dissemination of records and record information derived from the systems of FDLE and the United States Department of Justice (Chapter 943, F.S., Chapter 11C-6, F.A.C., 28 C.F.R. Part 20);
- C. User is a public, private, for profit, or not-for-profit entity operating within the State of Florida and is authorized to submit fingerprint cards and review resultant criminal history records as part of the screening process for its current and/or prospective employees and volunteers (which classes of persons shall be understood for purposes of this Agreement to include contractors and vendors who have or may have unsupervised access to the children, disabled, or elderly persons for whom User provides care), pursuant to section 943.0542, F.S., and the NCPA, and forms the legal basis for User's access to criminal history record information derived from the systems of the U.S. Department of Justice; and
- D. User is desirous of obtaining and FDLE is required and willing to provide such services so long as proper reimbursement is made and all applicable federal and state laws, rules, and regulations are strictly complied with.

Now, therefore, in light of the foregoing representations and the promises, conditions, terms, and other valuable considerations more fully set forth hereinafter or incorporated by reference and made a part hereof, FDLE and User agree as follows:

II. Service, Compliance, and Processing

A. FDLE agrees to:

1. Assist User concerning the privacy and security requirements imposed by state and federal laws, and regulations; provide User with copies of all relevant laws, rules, and or regulations as well as updates as they occur; offer periodic training for User's personnel;
2. Provide User with such state criminal history records and information as reported to, processed, and contained in its systems and legally available to the User; and
3. Act as an intermediary between User and the United States Department of Justice, securing for the use and benefit of User such federal and multi-state criminal history records or information as may be available to User under federal laws and regulations.

B. User agrees to:

1. Submit requests to FDLE for criminal history background checks pursuant to this agreement only for User's current and prospective Florida employees and volunteers, for whom User is not already required to obtain state and national (Level 2) criminal history background checks under any other state or federal statutory provision. User shall continue to comply with all other such statutory provisions for all applicable persons;
2. Determine whether the current or prospective employee or volunteer has been convicted of, or is under pending indictment for, a crime that bears upon his or her fitness to have access to or contact with children, the elderly, or individuals with disabilities;
3. Obtain a completed and signed Waiver Agreement and Statement form (provided by FDLE) from every current or prospective employee and volunteer, for whom User submits a request for a criminal history background check to FDLE. (The signed Waiver Agreement and Statement allows the release of state and national criminal history record information to the qualified entity.) The Waiver Agreement and Statement must include the following: (a) the person's name, address, and date of birth that appear on a valid identification document (as defined at 18 U.S.C. section 1028); (b) an indication of whether the person has or has not been convicted of a crime, and, if convicted, a description of the crime and the particulars of the conviction; (c) a notification to the person that User may request a criminal history background check on the person as authorized by section 943.0542, F.S., and the NCPA; (d) a notification to the person of his or her rights as explained in paragraph 12 below; and (e) a notification to the person that, prior to the completion of the background check, User may choose to deny him or her unsupervised access to a

person to whom User provides care. User shall retain the original of every Waiver Agreement and Statement and provide FDLE with a copy thereof;

4. Use only fingerprint cards provided by FDLE specifically designed for use with requests for criminal history record checks under the NCPA; provide FDLE with a properly completed and executed fingerprint card for each current or prospective employee and volunteer for whom User requests a criminal history record check pursuant to this agreement; and indicate either "NCPA/VCA VOLUNTEER" or NCPA/VCA EMPLOYEE" in the "reason fingerprinted" block of each fingerprint card submitted. (VCA refers to Volunteers for Children Act);
5. Keep all records necessary to facilitate a security audit by FDLE and to cooperate in such audits as FDLE or other authorities may deem necessary. Examples of records that may be subject to audit are criminal history records; notification that an individual has no criminal history; internal policies and procedures articulating the provisions for physical security; records of all disseminations of criminal history information; and a current, executed User Agreement with FDLE;
6. ****IF ENTITY IS PRIVATE, FOR PROFIT OR NOT FOR PROFIT**** - Pay for services provided by FDLE and the Federal Bureau of Investigation (FBI) in accordance with rule 11C-6.004, F.A.C., with the submission of fingerprint cards;
7. ****IF ENTITY IS A GOVERNMENTAL AGENCY**** - If set up on a billing account with FDLE for services requested pursuant to this agreement, reimburse FDLE, in a timely fashion, in accordance with rule 11C-6.004, F.A.C., upon proper presentation of billing for state services rendered and reimburse the FBI, in a timely fashion via FDLE, upon proper presentation of billing for federal services rendered. ~~If not on a billing account, User shall pay for services provided by FDLE and the FBI in accordance with rule 11C-6.004, F.A.C., with the submission of fingerprint cards and requests for criminal history background checks;~~
8. ****IF ENTITY IS A GOVERNMENTAL AGENCY**** - Maintain adequate records and monitor allocate funds for payment of services under this agreement;
9. Insure that the appropriate personnel know to keep the information obtained under this agreement in a secure place and to use it only for the screening as outlined in this agreement;
10. Promptly advise FDLE of any violations of this agreement;
11. Share criminal history information with other qualified entities only after confirming with FDLE that the requesting entity has been designated a qualified entity and has signed a user agreement, and only after verifying that the current prospective employee or volunteer has authorized the release of his or her criminal history records, if any, to other qualified entities by a statement on his or her signed waiver. User will respond that it is unable to provide any information to the requesting entity if the current or prospective employee or volunteer has requested that his or her criminal history record (s) not be released to any other qualified entity; and
12. Notify the current or prospective employee or volunteer of his or her right to obtain a copy of the criminal history records, if any, contained in the report, and of the

person's right to challenge the accuracy and completeness of any information contained in any such report, and to obtain a determination as to the validity of such challenge before a final determination regarding the person is made by the qualified entity reviewing the criminal history information. (Information on these rights may be obtained by contacting FDLE, regarding Florida records, at FDLE, Attn: USB/VECHS Unit, P.O. Box 1489, Tallahassee, Florida 32302-1489, (850) 410-8324, or by contacting the FBI, regarding federal/national records, at FBI, Criminal Justice Information Services Division, Attn: SCU, MOD D-2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, (304) 625-3878.) A qualified entity that is required by law to apply screening criteria, notwithstanding any right to contest or request an exemption from disqualification, shall apply such screening criteria to the state and national criminal history record information received from the department.

III. Privacy and Security

- A. User shall use criminal history record information acquired hereunder only to screen User's Florida current and/or prospective employees and/or volunteers, and only for purpose(s) of employment and/or determination of suitability for access to children, elderly, or disabled persons, pursuant to the terms of the NCPA of 1993, as amended, and section 943.0542, F.S. If User is a governmental agency, such records may additionally be used in administrative hearings associated with one of the enumerated purposes;
- B. User shall not commingle criminal history records with other records, whether such other records are public or not;
- C. User shall not duplicate and/or disseminate criminal history records acquired hereunder for use outside of User entity except as authorized by state and federal law. Sharing of criminal history records with other qualified entities is permitted by the FBI provided that:
 - 1. Such other entity is authorized to receive criminal history record information derived from the systems of the U.S. Department of Justice in the manner specified herein and User has verified the other entity's qualifying status as required herein; and
 - 2. User properly listed "NCPA/VCA VOLUNTEER" or "NCPA/VCA EMPLOYEE", in the "reason fingerprinted" block of the fingerprint card User submitted to FDLE for the applicable current or prospective employee or volunteer. (VCA represents Volunteers for Children Act);
- D. User has been approved to receive criminal history record information pursuant to specific statutory authority and shall not use criminal history record information acquired pursuant to such approval for any other purpose;
- E. User shall not use or rely upon a criminal history record or information which is or is likely to be out-of-date and, in any event, if criminal activity is pertinent to and considered at the time of an employee or volunteer's service, a current computerized criminal history must be requested and relied upon;
- F. User may destroy criminal history records when they are no longer needed. The original Waiver Agreement and Statement form must be retained by User for as long as the employee or volunteer is working for User, or for five years, whichever is longer.

Destruction must be accomplished in a way so that the information cannot be retrieved; for example, the records may be shredded;

G. ~~User shall keep criminal history records acquired hereunder in a secure file, safe, or other security device, such as locked file cabinet in an access-controlled area, and shall take such further steps as are necessary to insure that the records are accessible only to those of its employees who have been trained in their proper use and handling and have a need to examine such records; and~~

H. ****IF ENTITY IS SUBJECT TO THE PUBLIC RECORDS ACT**** - If User is subject to the Public Records Act, chapter 119, F.S., User shall, upon receipt of any request, pursuant to the public records law, for a processed fingerprint card or criminal history record, transmit the request, along with the involved fingerprint card and criminal history record, to the Florida Department of Law Enforcement, Attention: User Services Bureau. FDLE will prepare copies of the involved documents, obliterating any state or federal data which is not available for dissemination under the Florida public records law, and return all documents to the User for response to the requester. However, a processed card, or photocopy of same, may be provided to a law enforcement agency for fingerprint identification purposes, if so requested. User shall not release any criminal history information that is made exempt from public records disclosure by law. In particular, record information derived from the U.S. Department of Justice shall not be disseminated outside the User entity or used for a purpose other than that specified in the statute authorizing the request, section 943.0542, F.S.

IV. Termination

Either FDLE or User may suspend the performance of services under this agreement when, ~~in the reasonable estimation of FDLE or User, the other party has breached any material term of the agreement.~~ Furthermore, upon FDLE becoming aware of a violation of this agreement which might jeopardize Florida's access to federal criminal history information, FDLE shall have the option of suspending services under this agreement, pending resolution of the problem. The violation of any material term of this agreement or of any substantive requirement or limitation imposed by the federal or state statutes, regulations, or rules referred to in this agreement shall be deemed a breach of a material term of the agreement.

Section 943.053(4), F.S., provides that criminal history record information received from (FDLE) "shall be used only for the purpose stated in the request." National criminal history information received from the FBI is made confidential by federal law and regulation. Section 815.04(3)(b), F.S., prohibits, as a third-degree felony, the willful and knowing disclosure of data from a computer system, without authorization, which data is made confidential by law.

V. Miscellaneous

A. User agrees that

1. User is currently operating a lawful business or other entity within the State of Florida, with a physical address in Florida;

2. User is legally authorized to operate its business or other entity within the State of Florida;
 3. ~~User has complied and will continue to comply with all requirements to properly operate its business or other entity within the State of Florida; and~~
 4. User shall promptly notify FDLE upon any change to the above, including but not limited to name, address, and status as a business or other entity operating in Florida.
- B. This agreement supersedes any previous agreements concerning the NCPA of 1993, as amended, and/or section 943.0542, F.S.;
- C. This agreement may be amended by FDLE as needed, to comply with state or federal laws or regulations, or administrative needs of FDLE; and
- D. This agreement is binding upon all User employees, agents, officers, representatives, volunteers, contractors, vendors, successors in interest, beneficiaries, subsidiaries, and assigns.

IN WITNESS HEREOF, the parties hereto have caused this agreement to be executed by the proper officers and officials.

NAME OF USER ENTITY _____

ENTITY HEAD _____ TITLE _____
(PLEASE PRINT)

ENTITY HEAD _____
(SIGNATURE)

DATE _____

WITNESS _____ TITLE _____

FLORIDA DEPARTMENT OF LAW ENFORCEMENT (FDLE)

BY _____ TITLE _____

DATE _____

WITNESS _____ TITLE _____

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